

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 EUGENE DIVISION

4
5 ADASA INC.,)

6 Plaintiff,)

7 v.)

8 AVERY DENNISON CORP.,)

9 Defendant.)

No. 6:17-cv-01685-MK

July 18, 2023

Eugene, Oregon

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14 **TRANSCRIPT OF PROCEEDINGS**

15 (Jury Trial - Day 6)

16
17 BEFORE THE HONORABLE MUSTAFA T. KASUBHAI

18 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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23 **COURT REPORTER:**

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CLARKE MCALLISTER	
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1 taught in this. And it's just not. And the same thing with
2 Kuhno. I won't belabor that point.

3 I want to talk to you briefly about obviousness,
4 because you -- what Judge Kasubhai tells you in the instructions
5 is that you look at obviousness at the time. And what Judge
6 Kasubhai tells you on page 14 is do not use hindsight. Consider
7 only what was known at the time of the invention, like what they
8 asked Mr. Williams in 2019. They didn't ask him, "Well, let's
9 look at this through the lens of 2008." Do not use hindsight.
10 You must evaluate it at the time.

11 And it must have a reason why it was obvious based on
12 "RFID For Dummies". Remember, they're only saying read "RFID For
13 Dummies" and Mr. McAllister's patent; it's obvious. That is
14 their argument.

15 And Dr. Engels told you why it's not, but there's
16 another reason why it's not, ladies and gentlemen. Judge
17 Kasubhai tells you that you can look at other evidence called
18 secondary considerations on why it would not be obvious. And
19 they list different factors called secondary considerations on
20 the bottom of 14: what other people may have thought about the
21 invention after the date. Like, for example, Plaintiff's
22 Exhibit 19, I'll talk to you about that, because you have that.
23 In February of 2010, Walmart told its suppliers to allocate most
24 significant bits in the serial number space of the binary data
25 field just as described in the patent. This is two years after

1 Mr. McAllister disclosed his application in May of 2008.

2 And let's see what that document says (as read): Avery
3 Dennison private brands RFID specifications for Walmart RFID item
4 marking.

5 Look at the date, folks. Two years later (as read):
6 Walmart requires the first eight bits to be reserved for the
7 supplier ID.

8 What do they call it? Most significant bits. This is
9 Walmart telling them -- remember the Walmart mandate in 2003 --
10 this is now 2010 suppliers: Take the 38 bits that
11 Mr. McAllister's disclosing in his invention, and now I want you
12 to use the first eight for most significant bits for supplier ID.

13 According to Mr. Secco, that's disclosed in "RFID For
14 Dummies" and Walmart should have known that. It's known in
15 Kuhno. Come on, Walmart. Get with it. Or is Walmart the
16 cutting-edge?

17 And then look at what Walmart says. And this is Avery
18 Dennison telling Walmart. The Walmart example in codes, the
19 38 bits -- remember, ladies and gentlemen, this is two years
20 later after Mr. McAllister's invention. Serial number, 8 bits
21 and 30 bits. That's Mr. McAllister's invention being adopted by
22 Walmart and Avery Dennison saying this is what Walmart requires.
23 That tells you that this was not obvious in May of 2008.

24 So remember the burden of proof on this limited issue
25 you have: a firm belief or conviction that is highly probable.